

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TARA B.,

Plaintiff,

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

Case No. C21-0332-SKV

ORDER REVERSING THE
COMMISSIONER'S DECISION

Plaintiff seeks review of the denial of her applications for Supplemental Security Income (SSI) and Disability Insurance Benefits (DIB). Having considered the ALJ's decision, the administrative record (AR), and all memoranda of record, the Court **REVERSES** the Commissioner's final decision and **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).

BACKGROUND

Plaintiff was born in 1987, has a high school education, and has worked as a barista and receptionist. AR 1120. Plaintiff has not been gainfully employed since September 2017. AR 17.

On November 13, 2018, Plaintiff applied for benefits, alleging disability as of September 1, 2017.¹ AR 223. Plaintiff's applications were denied initially and on reconsideration, and Plaintiff requested a hearing. AR 73-74, 143-44. After the ALJ conducted a hearing on September 1, 2020, the ALJ issued a decision on October 2, 2020, finding Plaintiff not disabled. AR 15-28, 36-71. The Appeals Council denied Plaintiff's request for review, making the ALJ's decision the Commissioner's final decision. AR 1-6. Plaintiff appealed the final decision of the Commissioner to this Court. Dkt. 4. Subsequently, on June 29, 2021, the Court granted the parties' stipulated motion to remand pursuant to sentence six of 42 U.S.C. § 405(g), and on September 9, 2021, the Appeals Council remanded the case for a de novo hearing before the ALJ because the recording from the prior September 1, 2020 hearing was inaudible and a transcript could not be prepared. AR 1200.

THE ALJ'S DECISION

On June 14, 2022, the same ALJ held a second de novo hearing, and utilizing the five-step disability evaluation process,² again subsequently issued an unfavorable decision on July 13, 2022, finding:

Step one: Plaintiff has not engaged in substantial gainful activity since her September 1, 2018, amended onset date.

Step two: Plaintiff has the following severe impairments: Ehlers-Danlos syndrome; postural orthostatic tachycardia syndrome ("POTS"); degenerative disc disease; substance abuse disorder; personality disorder; and depressive disorder.³

¹ At her September 1, 2020 hearing, Plaintiff amended the onset date to September 1, 2018. AR 40.

² 20 C.F.R. §§ 404.1520, 416.920.

³ Hypermobile Ehlers-Danlos Syndrome ("EDS") is "an inherited connective tissue disorder that is caused by defects in a protein called collagen," and is "generally considered the least severe form of EDS." National Institute of Health, Genetic and Rare Diseases Information Center, *Hypermobile Ehlers-Danlos Syndrome*, <https://rarediseases.info.nih.gov/diseases/2081/hypermobile-ehlers-danlos-syndrome> (last visited Aug. 1, 2023). "Common symptoms include joint hypermobility, affecting both large (elbows,

1 **Step three:** These impairments do not meet or equal the requirements of a listed
2 impairment.⁴

3 **Residual Functional Capacity:** Plaintiff can perform light work with additional
4 cognitive, social, and exertional limitations.

5 **Step four:** Plaintiff is unable to perform past relevant work as a barista and/or as a
6 receptionist.

7 **Step five:** As there are jobs that exist in significant numbers in the national economy that
8 Plaintiff can perform, including table worker and semiconductor bonder, Plaintiff is not
9 disabled.

10 AR 1099-1123.

11 Following the second hearing and decision, on October 31, 2022, the Court granted the
12 parties' stipulated motion to reopen the case. Dkt. 13,14.

13 LEGAL STANDARDS

14 Under 42 U.S.C. § 405(g), this Court may set aside the Commissioner's denial of social
15 security benefits when the ALJ's findings are based on harmful legal error or not supported by
16 substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir.
17 2005). As a general principle, an ALJ's error may be deemed harmless where it is
18 "inconsequential to the ultimate nondisability determination." *Molina v. Astrue*, 674 F.3d 1104,
19 1115 (9th Cir. 2012) *superseded on other grounds by* 20 C.F.R. § 416.920(a) (citations omitted).
20 The Court looks to "the record as a whole to determine whether the error alters the outcome of
21 the case." *Id.*

22 _____
23 knees) and small (fingers, toes)." *Id.* Postural orthostatic tachycardia syndrome or "POTS," by contrast,
is a "condition that causes a number of symptoms when [one] transition[s] from lying down to standing
up, such as a fast heart rate, dizziness and fatigue." *Postural Orthostatic Tachycardia Syndrome*,
Cleveland Clinic, [https://my.clevelandclinic.org/health/diseases/16560-postural-orthostatic-tachycardia-](https://my.clevelandclinic.org/health/diseases/16560-postural-orthostatic-tachycardia-syndrome-pots)
syndrome-pots (last visited Aug. 1, 2023).

⁴ 20 C.F.R. Part 404, Subpart P., App. 1.

Substantial evidence is “more than a mere scintilla. It means - and means only - such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Biestek v. Berryhill*, 139 S. Ct. 1148, 1154 (2019) (cleaned up); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for evaluating symptom testimony, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

DISCUSSION

Plaintiff argues the ALJ erred in assessing the medical opinions regarding her mental and physical impairments; in evaluating her testimony; and in evaluating the lay testimony from her former roommate, G.S. The Commissioner argues that the ALJ’s decision is free of harmful legal error, supported by substantial evidence, and should be affirmed.

A. The ALJ Erred in Part in Evaluating the Medical Opinions.

1. Medical Opinions Regarding Plaintiff’s Mental Impairments

Under regulations applicable to this case, the ALJ is required to articulate the persuasiveness of each medical opinion, specifically with respect to whether the opinions are supported and consistent with the record. *See* 20 C.F.R. § 404.1520c(a)-(c). An ALJ’s consistency and supportability findings must be supported by substantial evidence. *See Woods v. Kijakazi*, 32 F.4th 785, 792 (9th Cir. 2022).

1 Plaintiff argues that the ALJ erred in assessing the medical opinions regarding her mental
2 impairments from Drs. Shadrach, Widlan, and Swing. The Court addresses each in turn.

3 a. *Dr. Shadrach*

4 In support of her December 2019 opinion, Dr. Shadrach reviewed Plaintiff's
5 psychotherapy records, conducted a clinical interview, and administered an MSE and additional
6 cognitive and psychological tests. AR 580-86. She diagnosed major depressive disorder,
7 generalized anxiety disorder, and PTSD, and found that Plaintiff possessed good immediate
8 memory and concentration. AR 584-85. Dr. Shadrach further opined that while Plaintiff
9 possesses "the intellectual ability to manage both simple and complex tasks, to maintain focused
10 attention, to retain and recall new learning, and to understand both simple and abstract
11 instructions," her impaired mental health would undermine her ability to employ those skills
12 reliably in a work setting. AR 585 (noting that Plaintiff's "mental energies would be
13 compromised by her impaired mental health"). Regarding Plaintiff's social skills, Dr. Shadrach
14 opined that Plaintiff was "limited," noting, though, that Plaintiff "would likely interact with
15 others satisfactorily when she is not depressed." AR 585. Dr. Shadrach opined that even part-
16 time work would still "be compromised by [Plaintiff's] poor attendance and lack of motivation."
17 AR 585.

18 In concluding that Dr. Shadrach's opinion was only "partially persuasive," the ALJ found
19 that Dr. Shadrach's statements regarding Plaintiff's memory and concentration and her ability to
20 follow instructions, remember, and interact absent interference from her mental impairments
21 were adequately supported and thus persuasive. AR 1118. By contrast, the ALJ found that Dr.
22 Shadrach's related assessments that Plaintiff was unable to perform reliably in a work setting due
23 to her poor attendance and interference from mental impairment symptoms, and that Plaintiff

1 lacked motivation, were unsupported because they were not based on documented findings or
2 supporting clinical observations. AR 1117-18. Instead, the ALJ dismissed the assessments as
3 “conclusory” and based on Plaintiff’s self-report. AR 1117-18. The ALJ did not specifically
4 address the consistency of Dr. Shadrach’s opinion. AR 1118.

5 Plaintiff argues that the ALJ erred in discounting Dr. Shadrach’s opinion based on her
6 self-reporting. Dkt. 24 at 8 (citing *Ryan v. Comm’r of Soc. Sec.*, 528 F.3d 1194 (9th Cir. 2008)).
7 She contends that it is “well-established that mental health professionals” like Dr. Shadrach
8 “*must* rely on the combination of their [own] observations and reported symptoms,” and that “the
9 provider’s partial consideration of reported symptoms does not constitute substantial evidence to
10 discount an opinion.” Dkt. 28 at 3. Plaintiff further contends that Dr. Shadrach in fact supported
11 her conclusions with her own observations. Dkt. 28 at 3.

12 The Commissioner counters that the *Ryan* case relied on by Plaintiff has been abrogated,
13 and that Plaintiff’s subjective complaints do not constitute objective medical evidence or a
14 supporting explanation sufficient to support Dr. Shadrach’s opinion. Dkt. 27 at 8

15 In *Ryan*, the case cited by Plaintiff, the Ninth Circuit held that the ALJ improperly
16 discounted a medical opinion when the ALJ rejected it based on the examining psychiatrist’s
17 partial reliance on Plaintiff’s self-reports. *See* 528 F.3d at 1199–2000. The *Ryan* Court reasoned
18 that “[a]n ALJ does not provide clear and convincing reasons for rejecting an examining
19 physician’s opinion by questioning the credibility of the patient’s complaints where the doctor
20 does not discredit those complaints and supports his ultimate opinion with his own
21 observations.” *Id.* The Commissioner here is correct that the “clear and convincing reasons”
22 standard articulated in *Ryan* no longer applies to the Court’s evaluation of an ALJ’s findings
23 regarding medical opinions post-2017. However, the Commissioner is mistaken to the extent she

1 also suggests that *Ryan*'s holding regarding the role of a claimant's self-reports in evaluating
2 medical opinions has similarly been abrogated. *See, e.g., Nygren v. Saul*, 854 F. App'x 874, 876
3 (9th Cir. 2021) (citing *Ryan*, 528 F.3d at 1128, and *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th
4 Cir. 2017)) (demonstrating *Ryan*'s continuing validity in holding that "[t]o the extent that the
5 ALJ discredited [a psychologist's] opinion because it was based on [the claimant's] self-report,"
6 it constituted "reversible error [because] in the context of mental health evidence, a clinical
7 interview and mental health evaluation 'are objective measures and cannot be discounted as a
8 self-report'").

9 Indeed, the ALJ here erred when she discounted Dr. Shadrach's opinion based in part on
10 Plaintiff's subjective self-reporting, where Dr. Shadrach relied on objective procedures and tests
11 as well in forming her opinion. *See Buck*, 869 F.3d at 1049 (noting that psychiatric "[d]iagnoses
12 will always depend in part on the patient's self-report"). Ninth Circuit precedent is clear that:

13 [p]sychiatric evaluations may appear subjective, especially compared to evaluation
14 in other medical fields. Diagnoses will always depend in part on the patient's self-
15 report, as well as on the clinician's observations of the patient. But such is the nature
16 of psychiatry.

17 *Id.* "Thus, the rule allowing an ALJ to reject opinions based on self-reports does not apply in the
18 same manner to opinions regarding mental illness." *Id.*; *cf. Tommasetti v. Astrue*, 533 F.3d 1035,
19 1041 (9th Cir. 2008) (quoting *Morgan v. Comm'r. Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.
20 1999)) (holding that an ALJ may reject a physician's opinion "if it is based 'to a large extent' on
21 a claimant's self-reports that have been properly discounted as incredible").

22 Here, in evaluating Plaintiff's testimony, although the ALJ questioned the consistency of
23 Plaintiff's testimony, the ALJ did not make any affirmative findings that Plaintiff was
malingering or that Plaintiff lacked credibility. AR 1109-13. Nor has the Commissioner argued
in conjunction with the ALJ's evaluation of Plaintiff's testimony that the ALJ made such

1 findings. *See* Dkt. 27 at 10-13; *see also Robbins v. Soc. Sec. Admin.*, 466 F.3d 880, 883 (9th Cir.
2 2006) (“[U]nless an ALJ makes a finding of malingering based on affirmative evidence thereof,
3 he or she may only find an applicant not credible by making specific findings as to credibility
4 and stating clear and convincing reasons for each.”); *accord Treichler v. Comm’r of Soc. Sec.*
5 *Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014).

6 Because Dr. Shadrach’s opinion was based on her own clinical observations and testing,
7 in addition to Plaintiff’s self-reports, the ALJ’s supportability findings here were not supported
8 by substantial evidence. *See Allison G. v. Comm’r of Soc. Sec.*, No. C20-5839-BAT, 2021 WL
9 3661449, at *1 (W.D. Wash. Aug. 18, 2021) (same). Moreover, the ALJ here made no explicit
10 consistency findings regarding Dr. Shadrach’s opinion; therefore, remand is necessary for the
11 ALJ to reconsider the persuasiveness of Dr. Shadrach’s opinion.

12 b. *Dr. Widlan*

13 Dr. Widlan reviewed Plaintiff’s medical records and Dr. Swing’s opinions, conducted a
14 clinical interview, and administered an MSE in support of his May 2019 opinion in which he
15 diagnosed Plaintiff with PTSD, major depressive disorder, depersonalization disorder, cannabis
16 use disorder, opioid use disorder, and borderline personality disorder. AR 443. Dr. Widlan
17 opined that while Plaintiff possessed “adequate memory” and was “able to accept instruction
18 from a supervisor,” she would “struggle to persist with adequate pace due to anxiety and
19 characterological dysfunction.” AR 444. Dr. Widlan further found that Plaintiff possessed
20 “deficits in concentration and social reasoning.” AR 443-44. He opined that Plaintiff will
21 “become easily overwhelmed by task demands, which could impact pace,” and that she would
22 “likely struggle to consistently negotiate simple social stressors” and “has some deficits in ADLs
23 [activities of daily living].” AR 444.

1 In finding that Dr. Widlan's opinion was "not fully persuasive," the ALJ found
2 persuasive the portion of Dr. Widlan's opinion concluding that Plaintiff possessed adequate
3 memory and could accept instruction from a supervisor despite her deficits in concentration and
4 social reasoning. AR 1117. However, the ALJ found not persuasive Dr. Widlan's opinion
5 regarding Plaintiff's persistence, pace, and overwhelm. AR 1117. Specifically, the ALJ found
6 that, based on Plaintiff's performance on the MSE administered by Dr. Widlan and her clinical
7 interview with Dr. Widlan, there was insufficient support for Dr. Widlan's opined limitations
8 regarding Plaintiff's concentration, social reasoning, and her ability to persist with adequate
9 pace. AR 1117. The ALJ additionally found that Dr. Widlan's opined limitations were
10 inconsistent with the longitudinal record, including Plaintiff's performance on numerous MSEs,
11 treatment notes, and psychiatric observations. AR 1117 (multiple record citations).

12 Plaintiff argues that the ALJ erred in her supportability findings because her ability to
13 keep up during an MSE and clinical interview, such as that with Dr. Widlan, does not correspond
14 to a similar ability to sustain that persistence and pace on a job. Dkt. 24 at 6; Dkt. 28 at 2.
15 Moreover, Plaintiff asserts that Dr. Widlan "clearly" accounted for Plaintiff's performance in his
16 assessments. Plaintiff further contends that the ALJ's consistency finding was also erroneous
17 because Dr. Widlan's opinion was consistent with "the rest of the record and the opinions of the
18 other doctors who treated and examined Plaintiff for her mental impairments." Dkt. 24 at 6.

19 The Commissioner notes the numerous record citations that the ALJ provided in support
20 of her consistency findings. She further suggests that the ALJ was entitled to interpret the
21 evidence in the manner that she did in finding Plaintiff's treating and examining doctors'
22 opinions less persuasive, and contends that the ALJ adequately supported her findings with
23

1 relevant evidence or explanation. Dkt. 27 at 6. In reply, Plaintiff contends that the
2 Commissioner has cherry-picked references to normal examination findings. Dkt. 28 at 3.

3 The Court agrees that the ALJ's supportability findings regarding Dr. Widlan's opinion
4 are not supported by substantial evidence because his opinion was based not solely on the MSE
5 that he performed, but also on his clinical interview and record review. However, unlike Dr.
6 Shadrach, the ALJ additionally found that Dr. Widlan's opinion was inconsistent with the
7 longitudinal record. *See* AR 1117.

8 The numerous record documents to which the ALJ cited indeed constitute substantial
9 evidence demonstrating that Dr. Widlan's opined limitations regarding Plaintiff's concentration,
10 social reasoning and pace and persistence were inconsistent with her medical records as a whole.
11 *See* AR 1117 (citing AR 442, 463-64, 583-84, 685, 354, 402, 432, 438, 458, 463, 501, 505, 595,
12 668, 676, 684, 768, 782, 789, 855, 1998-99). While the limited April 2019-March 2020 therapy
13 records cited by Plaintiff in opposition establish that she shared feeling depressed and hopeless at
14 times with her therapist, Dr. Swing, the therapy records nevertheless fail to undermine the
15 typically minimal psychiatric findings detailed in Plaintiff's medical records from 2017-2022,
16 and relied on by the ALJ in support of her consistency findings. *See* AR 638, 630, 632, 636,
17 628, 634 (therapy records cited by Plaintiff).

18 Under *Woods*, the ALJ's finding that Dr. Widlan's opinion is inconsistent with the
19 longitudinal record itself provides a sufficient basis for the ALJ to conclude that the opinion was
20 unpersuasive. *See* 32 F.4th at 792-94 & n.4 (consistency and supportability constitute two
21 distinct factors that should be treated separately). Given the ALJ's consistency reasons, the Court
22 concludes that even though the ALJ erred in her supportability findings regarding Dr. Widlan's
23 opinion, the error was harmless. *See id.*; *see also Joseph F. v. Kijakazi*, 2022 WL 17903079, at

1 *7 (C.D. Cal. Oct. 11, 2022) (collecting cases and holding that under *Woods*, the ALJ’s failure to
2 address the supportability factor constituted harmless error where ALJ’s consistency findings
3 were supported by substantial evidence).

4 c. *Dr. Swing*

5 The record includes three opinions from Dr. Swing as discussed below.

6 i. 2019 Opinion

7 In January 2019, treating psychologist, Dr. Swing, submitted a letter regarding Plaintiff’s
8 mental health-related functioning based on her treatment of Plaintiff since September 2011, for
9 generalized anxiety disorder, major depressive disorder, and complex PTSD. AR 404. Dr.
10 Swing explained that Plaintiff has “substantial impairments in her activities of daily living,” and
11 is unable to “get out of bed or take care of her basic needs” most days. AR 404. She noted that
12 Plaintiff’s “anxiety typically prevents her from leaving the house,” and that when employed,
13 “she has been unable to engage in consistent work without being impacted by her mental health
14 symptoms,” and unable to “behave[e] and engag[e] effectively with others.” AR 404. In sum,
15 Dr. Swing opined that Plaintiff’s mental impairments “prevent her from engaging in any
16 substantial gainful activity.” AR 404.

17 The ALJ found Dr. Swing’s 2019 opinion unpersuasive, concluding that Dr. Swing
18 offered an opinion on an issue reserved to Commissioner. AR 1116. Additionally, the ALJ
19 found the opinion was unsupported because Dr. Swing relied primarily on Plaintiff’s own self-
20 reports, which the ALJ found were themselves “unsupported by the evidence.” AR 1116.

21 ii. 2020 Mental RFC Assessment

22 In July 2020, Dr. Swing completed a check-box RFC assessment, evaluating Plaintiff’s
23 functional limitations in four categories, including understanding and memory, sustained

1 concentration and persistence, social interaction, and adaptation. AR 640-42. Dr. Swing opined
2 that Plaintiff possessed multiple marked limitations in all four categories. AR 640-42.

3 The ALJ found Dr. Swing's RFC assessment unpersuasive because Dr. Swing failed to
4 provide objective support for her RFC findings. AR 1116. The ALJ further found that Dr.
5 Swing's opinion was inconsistent with Plaintiff's performance on MSEs, treatment notes, and
6 psychiatric observations. AR 1116 (multiple record citations identical to those offered in
7 rejecting Dr. Widlan's opinion).

8 iii. 2021 Opinion

9 Subsequently, in January 2021, Dr. Swing completed a comprehensive psychological
10 evaluation based on her nine years treating Plaintiff, a clinical interview, and numerous in-person
11 tests and assessments in addition to online testing. AR 1491-1592. Dr. Swing diagnosed
12 Plaintiff with PTSD, severe persistent depressive disorder, ADHD, and unspecified
13 neurocognitive disorder, and opined that the neurocognitive and psychological testing suggest
14 that Plaintiff's "emotional difficulties" "exacerbate her cognitive difficulties," and cause "a
15 complicated constellation of symptoms and difficulties." AR 1524, 1526, 1562. Dr. Swing
16 opined that Plaintiff's mental impairments "significantly impair[]" her "ability to interact
17 socially and adapt to outside environments or unfamiliar places." AR 1528. Dr. Swing further
18 opined that if Plaintiff were able to receive support to treat her physical impairments, "as well as
19 continue counseling and medication management to stabilize other symptoms," it is "possible"
20 that she may be able to work on a part-time basis. AR 1528. However, Dr. Swing ultimately
21 opined that it is "unlikely" that Plaintiff would achieve the "ability to be gainfully employed or
22 [to] return to a previous level of functioning." AR 1528.

1 Similar to Dr. Swing's 2019 opinion, the ALJ found that Dr. Swing's 2021 opinion was
2 "not very persuasive," suggesting that the opinion was unsupported based on the possibility that
3 Plaintiff's performance on certain tests was exaggerated and that some of her responses on the
4 tests gave reason for concern or were invalid. AR 1119. The ALJ therefore found Dr. Swing's
5 reliance on the test results "problematic." AR 1119. The ALJ further found that Dr. Swing
6 "provide[d] little information regarding specific work-related impairments" and that the report,
7 while lengthy, "shed[] little light on [Plaintiff's] actual ability to function in a work setting." AR
8 1119.

9 iv. Analysis

10 Although Dr. Swing provided three separate opinions in 2019, 2020, and 2021, and the
11 ALJ offered separate findings regarding each of the opinions, Plaintiff combined her arguments
12 regarding the three opinions. Dkt. 24 at 10.

13 First, Plaintiff suggests that the ALJ erred in her supportability findings regarding all
14 three of Dr. Swing's opinions. She contends that the ALJ erred in concluding at step two that
15 there was sufficient evidence that she possessed severe mental impairments, but then rejected the
16 limitations from Plaintiff's doctors. Dkt. 24 at 10. Plaintiff also asserts that Dr. Swing's
17 opinions should have been deemed more supportable based on her extensive treating relationship
18 with Plaintiff and the fact that she conducted the most extensive testing of any psychologist in
19 the record. Dkt. 24 at 10.

20 The Commissioner responds that Dr. Swing did not provide objective medical evidence
21 to support her 2019 and 2020 opinions, and further notes that the ALJ's determination that Dr.
22 Swing's 2019 and 2021 opinions were not supported because the test results and Plaintiff's self-
23 supporting were unreliable. Dkt. 27 at 9. In reply, Plaintiff makes the same argument that she

1 did regarding Dr. Shadrach's opinion, asserting that it is "well-established that mental health
2 professionals" like Dr. Swing "*must* rely on the combination of their [own] observations and
3 reported symptoms." Dkt. 28 at 3.

4 Second, in an argument that pertains solely to the reason the ALJ offered for rejecting Dr.
5 Swing's 2020 RFC assessment, Plaintiff contends that the ALJ's consistency findings regarding
6 Dr. Swing's 2020 assessment were erroneous because her performance on MSEs throughout the
7 record did not undermine her ability to sustain attention and concentration since a ninety-minute
8 MSE cannot be compared to an eight-hour workday or forty hour workweek. Dkt. 28 at 3. She
9 further asserts that her treatment notes indeed "show many abnormalities, including crying
10 spells, hopelessness, constant thoughts about dying and suicide, conflicts with family and
11 friends, deficits in executive functioning, feelings of worthlessness, struggles with physical pain,
12 mood swings, erratic reactions to medications, and fatigue." Dkt. 28 at 3 (citing AR 628-39).
13 The Commissioner counters that the treatment notes cited by Plaintiff do not themselves
14 demonstrate any abnormalities, and that the existence of a severe mental impairment does not
15 *per se* establish functional limitations. Dkt. 27 at 9-10.

16 At the outset, the Court notes that the ALJ's finding of a severe impairment at step two of
17 the sequential analysis does not in and of itself establish particular limitations, as Plaintiff
18 suggests. *See* 20 C.F.R. § 404.1545(a). Instead, the requisite limitations will depend on the
19 particular medical evidence in the individual case. Thus, the ALJ's finding here that Plaintiff's
20 depression and personality disorder were severe at step two did not also mandate that the ALJ
21 subsequently accept all of the limitations proffered by Plaintiff's treating and examining
22 psychologists.
23

1 Nor did Dr. Swing's treating status require that the ALJ find Dr. Swing's opinions more
 2 persuasive. 20 C.F.R. § 416.920c(a). The 2017 Rule Revisions "displace[d] [the Ninth Circuit's]
 3 longstanding case law" interpreting the prior regulations to require that ALJs typically give
 4 special preference to treating and examining physicians' opinions. *See Woods* 32 F.4th at 787,
 5 791. Instead, the ALJ need only consider the relative treating status of physicians when two or
 6 more distinct medical opinions are equally supported and consistent. *See* 20 C.F.R. §§
 7 404.1520c(b)(3), 416.920c(b)(3); *see also Woods*, 32 F.4th at 792 (discussing 20 C.F.R. §
 8 404.1520c(b)(3)) ("In that case, the ALJ 'will articulate how [the agency] considered the other
 9 most persuasive factors.'"). Here, the ALJ did not find Dr. Swing's opinions to be as well-
 10 supported and consistent with the record as Dr. Gollogly's opinion; thus, the ALJ was not
 11 required to consider Dr. Swing's treatment relationship.⁵ *See id.*

12 The Court agrees that the ALJ erred in her supportability findings regarding Dr. Swing's
 13 2019 and 2021 opinions for the same reasons set forth above regarding Dr. Shadrach's opinion.
 14 Moreover, the ALJ further erred in her supportability findings regarding Dr. Swing's 2021
 15 opinion because Dr. Swing acknowledged and incorporated any concerns she possessed
 16 regarding Plaintiff's performance on the tests into her ultimate opinion, thus accounting for any
 17 exaggerated responses in the opinion. Given the ALJ's failure to offer explicit consistency
 18 findings regarding either Dr. Swing's 2019 opinion or her 2021 opinion, remand is required for
 19 the ALJ to reconsider the persuasiveness of Dr. Swing's 2019 and 2021 opinions.⁶

21 ⁵ The Court further notes that Dr. Swing did not conduct her extensive psychological testing until 2021 –
 22 after she issued her 2019 and 2020 opinions. Thus, Dr. Swing's 2019 and 2020 opinions were not based
 on those tests.

23 ⁶ The Court agrees with the ALJ and the Commissioner that Dr. Swing's assessment in her 2019 opinion
 regarding Plaintiff's ultimate ability to work constitutes an opinion on an issue reserved to the
 Commissioner. *See* 20 C.F.R. § 404.1520b(c)(3)(i) (noting that a statement that a claimant is or is "not

1 The same, however, is not the case with Dr. Swing's 2020 mental RFC assessment. AR
 2 640-42. There, Dr. Swing indeed failed to offer any narrative responses or explanation for any
 3 of her check-box assessments, and, given that Dr. Swing had not yet conducted her own clinical
 4 testing at the time the 2020 assessment was completed, it was reasonable for the ALJ to find that
 5 the 2020 assessment was not adequately supported. Moreover, for the same reasons detailed
 6 above regarding the ALJ's consistency findings as to Dr. Widlan's opinion, the ALJ's identical
 7 consistency findings regarding Dr. Swing's 2020 opinion were similarly supported by substantial
 8 evidence. *See* AR 1116 (AR 442, 463-64, 583-84, 685, 354, 402, 432, 438, 458, 463, 501, 505,
 9 595, 668, 676, 684, 768, 782, 789, 855, 1998-99).

10 In sum, the ALJ's evaluation of Dr. Widlan's and Dr. Swing's 2020 opinions is affirmed.
 11 However, because the ALJ's supportability reasons fail with respect to Dr. Shadrach's opinion
 12 and the 2019 and 2021 opinions from Dr. Swing – opinions for which the ALJ offered no
 13 specific consistency findings – the Court reverses and remands to the ALJ to reconsider the
 14 persuasiveness of Dr. Shadrach's opinion and Dr. Swing's 2019 and 2021 opinions.

15 **2. Medical Opinions Regarding Plaintiff's Physical Impairments**

16 Plaintiff challenges the ALJ's evaluation of Dr. Deem's opinion. Dr. Deem interviewed
 17 and examined Plaintiff in conjunction with her February 2020 opinion, but acknowledged that
 18 that she did not review any records. AR 589. Dr. Deem observed that "when [Plaintiff] walked
 19 in," she had "no arm swing," and "her speed was very slow." AR 590. Her examination,
 20 however, revealed that Plaintiff's strength, range of motion, grip, and reflexes were all within
 21 normal limits. AR 590-91. The only observed abnormality was "some pain" in Plaintiff's right
 22

23 disabled, blind, able to work, or able to perform regular or continuing work" is "neither valuable nor
 persuasive"). However, Dr. Swing also included additional statements regarding Plaintiff's functional
 limitations in the 2019 opinion that are not on the ultimate issue. *See* AR 404.

1 sacroiliac joint when she performed a straight leg raising test. AR 591. Dr. Deem diagnosed
2 EDS, sciatic pain on the right side, and lumbar L4-5 nerve impingement. Dr. Deem opined that
3 Plaintiff possessed both postural and manipulative limitations, and found that Plaintiff was
4 limited to occasional climbing of stairs, balancing, stooping, crouching, crawling, reaching
5 overhead and forward, handling, fingering, and feeling. AR 592.

6 The ALJ rejected Dr. Deem's opinion regarding the postural and manipulative
7 limitations, except to agree with Dr. Deem that Plaintiff could only occasionally push and/or pull
8 with her left lower extremity and that she could never climb ladders, ropes, or scaffolds. AR
9 1107, 1114-15. In rejecting Dr. Deem's opined limitations, the ALJ found that they were not
10 supported by Dr. Deem's physical examination, and that the bases for Dr. Deem's limitations
11 were unclear and did not "appear to be objectively supported." AR 1114. The ALJ further
12 found that Dr. Deem's limitations were not consistent with the record as a whole, which the ALJ
13 found "showe[ed] inconsistent treatment for [Plaintiff's] physical complaints, generally good
14 response to treatment, a fairly normal range of daily activities, and few significant findings on
15 examination." AR 1115. In particular, the ALJ found that Plaintiff was "typically noted to have
16 a normal gait, normal range of motion, normal strength," and to be "in no acute or apparent
17 distress." AR 1115 (numerous record citations).

18 Plaintiff contends that the ALJ erred in rejecting Dr. Deem's postural and manipulative
19 limitations, focusing primarily on the reaching and fingering limitations opined to by Dr. Deem.
20 Dkt. 24 at 4. Plaintiff argues that having found that her EDS constituted a severe impairment,
21 the ALJ erred in rejecting the limitations that Dr. Deem "attributed to this impairment based on
22 an alleged lack of significant abnormalities on examination." Dkt. 24 at 5. In support, Plaintiff
23 asserts that the very nature of EDS is joint instability. Dkt. 28 at 2. Plaintiff additionally

1 contends that record examination findings indeed documented Plaintiff’s “reduced muscle
2 strength” and “hypermobility and hyperextension of . . . [her] thumbs, elbows, and ankles” in
3 support of and consistent with Dr. Deems’ opinion. Dkt. 28 at 2 (citing AR 506, 552-53, 555,
4 559, 561, 564-65, 568-69, 571-72, 575-76, 596, 822). Finally, Plaintiff argues that her ADLs did
5 not provide adequate support for the ALJ’s discounting of Dr. Deem’s opinion because Plaintiff
6 described performing them “in short bursts with many breaks to rest,” which was consistent with
7 the limitations to which Dr. Deem opined. Dkt. 24 at 5 (citing AR 286-89).

8 The Commissioner counters that the ALJ reasonably found that Dr. Deem’s opinion was
9 unsupported given that Dr. Deem did not herself document any joint instability in her
10 examination and also did not review any records at all – including those that demonstrated that
11 Plaintiff suffered from joint instability. *See, e.g.*, AR 506. The Commissioner argues that
12 Plaintiff’s own reports of joint instability were an insufficient basis for Dr. Deem’s opinion, and
13 that Dr. Deem’s opined limitations were thus not supported by her own examination. Dkt. 27 at
14 4. As for the ALJ’s consistency findings, the Commissioner asserts that none of the records cited
15 by the ALJ or in opposition by Plaintiff support any manipulative limitations.

16 The Commissioner is correct that Dr. Deem did not record any findings of joint
17 instability in conjunction with her own physical examination of Plaintiff, which itself exclusively
18 produced nearly all normal findings. AR 591. Nor did Dr. Deem review any of Plaintiff’s
19 medical records – including those that documented joint instability. However, as Plaintiff notes,
20 Dr. Deem diagnosed EDS and referenced Plaintiff’s joint instability in opining regarding her
21 maximum lifting and carrying capacity. AR 591. While the source of Dr. Deem’s joint
22 instability finding is unclear given that Dr. Deem did not herself review any medical records, it
23 would appear that Dr. Deem relied on Plaintiff’s self-report and/or the nature of an EDS

1 diagnosis. Because there is no dispute that Plaintiff was diagnosed with EDS and that her
2 medical records on occasion referenced her joint stability, the Court finds that Dr. Deem's
3 reference to joint instability was not unsupported in connection with her opinion regarding
4 Plaintiff's lifting and carrying restrictions.

5 However, in addition to the lifting and carrying restriction, Dr. Deem also limited
6 Plaintiff's postural and manipulative activities, but, unlike the lifting and carrying restriction, Dr.
7 Deem provided no corresponding explanation for the postural and manipulative restrictions. *See*
8 AR 592. Additionally, as noted by the ALJ, the bases for those limitations were unclear from
9 Dr. Deem's opinion, and were not supported by her examination, which, in fact, found that
10 Plaintiff's

11 [r]ange of motion of her neck, back, hips, knees, ankles, shoulders, elbows,
12 forearms, wrists, and thumbs were all within normal limits. Straight leg raising was
13 to [ninety] degrees supine and [twenty-five] degrees sitting. She had 5/5 strength in
14 her upper and lower extremities and in grip strength. She had normal bulk and tone
throughout and no evidence atrophy. Sensation was grossly intact to light touch and
pinprick throughout her upper and lower extremities. Deep tendon reflexes were 1+
in both upper and lower extremities.

15 AR 1114. Thus, the ALJ's determination that Dr. Deem's opined postural and manipulative
16 limitations were unsupported was itself supported by substantial evidence.⁷

17 Additionally, the ALJ's finding that Dr. Deem's opined limitations were inconsistent
18 with the longitudinal record was also supported by substantial evidence. *See* AR 1115 (citing
19 596, 916, 352, 354, 432, 438, 457, 501, 5050, 529, 595, 600, 604, 668, 676, 684, 768, 774, 782,
20 853, 880, 953, 1625, 1662, 1758, 578, 1711, 2174, 2925). While medical records confirm
21 Plaintiff's hypermobility, they also show that the vast majority of her physical examinations
22 revealed normal findings, with no evidence of joint deformity or signs of more serious EDS. *See*

23 _____
⁷ The Court declines Plaintiff's invitation to manufacture reasons in support of Dr. Deem's opined
limitations.

1 AR 596 (Dr. Greenfield notes hypermobility, but finds that Plaintiff does not “exhibit signs or
2 symptoms of vascular EDS”); *see also* AR 853 (Dr. Welch notes in 2020 that there is “no
3 evidence of joint deformity” and that Plaintiff’s “full range of motion to all major joints [is]
4 intact”). Moreover, as the Commissioner accurately notes, and contrary to Plaintiff’s assertion
5 otherwise, the existence of an impairment at step two of the sequential analysis does not itself
6 establish particular limitations. *See* 20 C.F.R. § 404.1545(a). The requisite limitations will
7 depend on the particular medical evidence in the individual case.

8 Here, none of the cited records, including those relied on by Plaintiff, required the
9 additional limitations opined to by Dr. Deem and rejected by the ALJ. Plaintiff’s own cited
10 records consist almost exclusively of notes related to the physical therapy she received following
11 her August 2019 EDS diagnosis during a very limited two-month period in September and
12 October 2019, and prior to her discharge from physical therapy for non-compliance in November
13 2019. *See* AR 506, 552-53, 555, 559, 561, 564-65, 568, 573, 575, 579, 822. Many of those
14 records themselves reveal progress in terms of Plaintiff’s pain related to her physical
15 impairments, and, other than to demonstrate the fact of hypermobility, the records do not support
16 Dr. Deem’s opinion. *See* AR 552 (Plaintiff reports relief in September 2019 after one session);
17 AR 561, 573, 575-76. Accordingly, the Court finds that the ALJ’s consistency findings as to Dr.
18 Deem’s opinion were also supported by substantial evidence.⁸

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22 ⁸ This is the case even if, as Plaintiff asserts, the ALJ erred in her related finding that Dr. Deem’s opinion
23 was inconsistent with Plaintiff’s “fairly normal range of daily activities.” AR 1114. The ALJ’s other
findings on the consistency factor – including Plaintiff’s “generally good response to treatment,” and
findings that Plaintiff “typically . . . ha[d] a normal gait, normal range of motion, normal strength, and
[was] in no acute or apparent distress” were all supported by substantial evidence for the reasons stated
above and are alone sufficient to uphold the ALJ’s consistency findings.

B. The ALJ Did Not Err in Evaluating Plaintiff's Testimony.

1. Testimony Regarding Plaintiff's Mental Impairments

Plaintiff testified at the June 2022 hearing that she was living with her father and that she continued to receive treatment for her mental health, including psychiatric medications. AR 1141-42. She asserted that she suffers from depression, PTSD, panic attacks, and agoraphobia, and explained that she has "very little hope for [her] future" and noted that she primarily leaves the house only for medical appointments or to go to the pharmacy. AR 1143. According to Plaintiff, as long as she is not "triggered," she suffers from panic attacks approximately once per month, during which she cries and "get[s] upset." AR 1144.

The ALJ found at step two that Plaintiff's personality disorder and major depressive disorder constituted severe impairments, and that Plaintiff presented objective medical evidence establishing that her medically determinable impairments could cause the symptoms alleged, and no affirmative evidence of malingering.⁹ Tr. 19, 23. The ALJ was therefore required to provide "specific, clear and convincing reasons" for rejecting Plaintiff's testimony concerning the intensity, persistence, and limiting effects of her symptoms. *Tommasetti*, 533 F.3d 1035, 1039 (9th Cir. 2008) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996)); accord *Smartt v. Kijakazi*, 53 F.4th 489, 499 (9th Cir. 2022) (confirming that the "clear and convincing" standard continues to apply).

The ALJ discounted Plaintiff's testimony regarding the intensity, persistence, and limiting effects of her mental impairments as "not consistent with the medical evidence and other evidence in the record." Tr. 23. The ALJ offered three reasons for discounting Plaintiff's

⁹ By contrast, the ALJ found at step two that there was insufficient evidence in the record to establish that Plaintiff's alleged anxiety disorder and PTSD constituted medically determinable impairments. 1105. Plaintiff has not challenged the ALJ's step two findings. See Dkt. 24.

1 testimony regarding “extremely limiting mental health symptoms,” finding that it was: (1)
2 inconsistent with the longitudinal record, including her performance on MSEs, treatment notes,
3 and psychiatric observations, citing to the same record evidence that the ALJ proffered in
4 discounting Dr. Widlan’s medical opinion; (2) inconsistent with Plaintiff’s other statements
5 regarding her daily activities; and (3) that treating records indicated that Plaintiff’s therapy and
6 medication have resulted in some improvement. AR 1112-13.

7 As she did with the medical opinions, Plaintiff points to records from her psychologist,
8 Dr. Swing, in challenging the ALJ’s finding that her testimony was inconsistent with the
9 longitudinal record. Dkt. 24 at 13 (citing AR 628-39). However, again, as discussed above, the
10 numerous record documents to which the ALJ cited indeed constitute clear and convincing
11 reasons for discounting Plaintiff’s testimony regarding the extent of her limitations related to her
12 mental impairments. *See* AR 1112 (citing AR 442, 463-64, 583-84, 685, 354, 402, 432, 438,
13 458, 463, 501, 505, 595, 668, 676, 684, 768, 782, 789, 855, 1998-99). The limited therapy
14 records cited by Plaintiff fail do not diminish the typically minimal psychiatric findings detailed
15 in Plaintiff’s medical records from 2017-2022 and relied on by the ALJ in support of her
16 consistency findings. *See* AR 638, 630, 632, 636, 628, 634 (therapy records cited by Plaintiff).
17 Moreover, the ALJ offered an additional unchallenged, valid reason for discounting Plaintiff’s
18 testimony: evidence that Plaintiff’s therapy and medication have resulted in improvement in her
19 mental health symptoms. AR 1113 (citing AR 1929-1944). Even if the ALJ erred in her
20 description of or utilization of Plaintiff’s ADLs, either of these two reasons alone constituted
21 substantial evidence for discounting Plaintiff’s testimony regarding her mental impairments.

22 **2. Testimony Regarding Plaintiff’s Physical Impairments**

23 At the June 2022 hearing, Plaintiff testified that standing and lifting pans causes her pain,

1 and, as a result, she prepares frozen meals or protein shakes for herself. AR 1144. She stated
2 that her father, with whom she lives, typically prepares dinner for her several times per week.
3 AR 1144. She is able to vacuum her room with a lightweight vacuum and cleans her bathroom a
4 little at a time. AR 1144-45. Plaintiff's father drives her around and cares for her car. AR 1145.
5 She testified that hot baths and showers make her heart rate climb, and that she no longer enjoys
6 putting on make-up or doing her hair because they are both painful. AR 1145.

7 Plaintiff explained that her physical impairments make her feel like she has thrown out
8 her back or her neck, and that she also experiences symptoms including a high heart rate,
9 dizziness, nausea, and migraines. AR 1145-46. As for her EDS, Plaintiff described pain in her
10 joints, muscles, and ligaments, along with a feeling like her "shoulders could pop out of socket."
11 AR 1146. Her POTS causes a high heart rate, temperature sensitivity, drenching sweat,
12 dizziness, and migraines. AR 1147. Plaintiff, however, is unable to take the recommended
13 medication for POTS because she suffers from asthma, and the medication is contraindicated.
14 AR 1147. As a result, she instead had a port placed and receives daily infusions at home. AR
15 1147.

16 In terms of functional limitations, Plaintiff explained that she has a difficult time lifting
17 items because it hurts her hands, wrists, shoulders, and back. AR 1150. She stated that she is
18 not comfortable lifting more than five pounds. AR 1150. Plaintiff also stated that she is unable
19 to walk any distance because she is left "completely fatigued and depleted." AR 1150. Her EDS
20 affects all of her joints, including her finger joints, and causes fatigue in her hands. AR 1150-51.

21 In discounting Plaintiff's testimony regarding the intensity, persistence, and limiting
22 effects of the symptoms associated with her physical impairments, the ALJ found that Plaintiff's
23 statements were inconsistent with other evidence in the longitudinal record, including medical

1 records documenting “generally unremarkable constitutional findings and examinations” and an
2 absence of “acute distress or visible discomfort,” minimal and mild physical examinations
3 findings, and objective tests and imaging that failed to show “any significant abnormality.” AR
4 1110 (citing AR 596, 916, 352, 354, 432, 438, 457, 501, 5050, 529, 595, 600, 604, 668, 676, 684,
5 768, 774, 782, 853, 880, 953, 1625, 1662, 1758, 578, 1711, 2174, 2925, 1456-57, 1442, 1443,
6 1440, 1611, 1614). The ALJ further found that the record indicated that Plaintiff’s physical
7 impairment symptoms improved with treatment. AR 1110-11 (citing AR 578-89, 1711, 2174,
8 2925).

9 In arguing that the ALJ erred in rejecting her testimony, Plaintiff asserts that “the ALJ
10 has taken some of [her] moments of better functioning out of context in an attempt to discredit
11 her testimony,” thus suggesting that the ALJ has cherry-picked medical records. Dkt. 24 at 12.
12 She further contends that the ALJ failed to identify how the medical evidence is inconsistent
13 with her specific testimony. Dkt. 24 at 13.

14 As discussed above with Dr. Deem’s opinion, the ALJ’s finding that the longitudinal
15 record was inconsistent with Plaintiff’s testimony was supported by the medical records cited
16 both by the ALJ and by Plaintiff. Those records undermine Plaintiff’s testimony regarding the
17 constant and acutely debilitating pain that she alleges to have suffered, and provide clear and
18 convincing evidence in support of the ALJ’s rejection of Plaintiff’s testimony regarding her
19 physical impairments. Moreover, the Court notes that the ALJ also provided two additional
20 unchallenged reasons in support of her evaluation of Plaintiff’s testimony: evidence of
21 improvement and objective testing and imaging that revealed largely normal findings. Any of
22 the three reasons alone constitute an adequately clear and convincing reason to support the ALJ’s
23 related findings.

1 For all of these reasons, the ALJ did not err in her assessment of Plaintiff's mental and/or
2 physical impairment testimony.

3 **C. The ALJ Did Not Err in Evaluating the Lay Testimony.**

4 In January 2019, Plaintiff's friend and former roommate, G.S., submitted a third party
5 function report on Plaintiff's behalf. AR 278. G.S. stated that she had known Plaintiff for four
6 years and spent every day with Plaintiff during that time. AR 278. G.S. stated that Plaintiff
7 prepared her own meals daily, and that she was able to complete her personal care, clean, do
8 laundry, and do dishes without any help. AR 279-80. G.S. noted that Plaintiff went out several
9 times per week, and that she was able to drive, shop, pay bills, and handle her finances
10 independently. AR 281-82.

11 In addition, G.S. stated that Plaintiff suffered from social anxiety and had "trouble
12 concentrating, following [verbal] instructions, recalling information, and being in social
13 environments." AR 283. G.S. noted that Plaintiff did not handle stress or authority figures well,
14 that she had in the past "been triggered by insensitive managers and blamed for her disability,"
15 and was "terrified of judgment, anger, confrontation, correction, and learning." AR 284. G.S.
16 summarized that Plaintiff's disability "is profound and detrimental to her ability to live a full and
17 happy life." AR 285.

18 The ALJ acknowledged and agreed with G.S.'s testimony that Plaintiff "is limited from
19 both a physical and mental standpoint" but discounted G.S.'s full description of Plaintiff's
20 limitations as not supported by the record. AR 1119. Plaintiff argues that the ALJ erred in
21 failing to provide germane reasons in support of her rejection of G.S.'s testimony. The
22 Commissioner suggests that germane reasons are no longer required, but nevertheless contends
23 that the ALJ's reasoning was sufficient under any standard.

1 For cases filed after March 27, 2017, such as this one, an ALJ is “not required to
2 articulate” how he or she evaluated evidence from non-medical sources such as educational
3 personnel, public and private social welfare agency personnel, and other lay witnesses. 20
4 C.F.R. § 404.1502(e). Nevertheless, the Ninth Circuit has suggested that its pre-2017 standard
5 requiring “germane” reasons to reject lay witness testimony applies to an ALJ’s evaluation of lay
6 witness testimony post-2017. *See Muntz v. Kijakazi*, 2022 WL 17484332, at *2 (9th Cir. Dec. 7,
7 2022) (applying “germane reasons” standard to ALJ’s evaluation of third-party function report
8 from claimant’s husband); *Weitman v. Kijakazi*, 2022 WL 17175060, at *4 n.4 (9th Cir. Nov. 23,
9 2022); *but see Fryer v. Kijakazi*, No. 21-36004, 2022 WL 17958630, at *3 (9th Cir. Dec. 27,
10 2022) (noting that “[i]t is an open question whether ALJs are still required to consider lay
11 witness evidence under the revised regulations, although it is clear they are no longer required to
12 articulate it in their decisions”).

13 Here, regardless of the standard, G.S.’s statement describes the same physical and mental
14 limitations to which Plaintiff testified, and, for the reasons above, Plaintiff has not shown that the
15 ALJ erred in discounting her testimony. Accordingly, the ALJ also provided adequate reasons
16 for discounting G.S.’s testimony. *See Valentine v. Comm’r of Soc. Sec. Admin.*, 574 F.3d 685,
17 694 (9th Cir. 2009) (because “the ALJ provided clear and convincing reasons for rejecting [the
18 claimant’s] own subjective complaints, and because [the lay witness’s] testimony was similar to
19 such complaints, it follows that the ALJ also gave germane reasons for rejecting [the lay
20 witness’s] testimony”); *Johnson v. Kijakazi*, 2022 WL 3998572, at *2 (9th Cir. Sep. 1, 2022)
21 (finding harmless error in ALJ’s failure to address lay statements where the lay statements were
22 similar to plaintiff’s properly rejected testimony in a case applying the 2017 regulations).

1 **D. Remedy**

2 Plaintiff requests remand for an award of benefits based on the ALJ's alleged errors.
3 Dkt. 24 at 16-17.

4 Remand for an award of benefits "is a rare and prophylactic exception to the well-
5 established ordinary remand rule." *Leon v. Berryhill*, 880 F.3d 1041, 1044 (9th Cir. 2017). The
6 Ninth Circuit has established a three-step framework for deciding whether a case may be
7 remanded for an award of benefits. *Id.* at 1045. First, the Court must determine whether the ALJ
8 has failed to provide legally sufficient reasons for rejecting evidence. *Id.* (citing *Garrison v.*
9 *Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014)). Second, the Court must determine "whether the
10 record has been fully developed, whether there are outstanding issues that must be resolved
11 before a determination of disability can be made, and whether further administrative proceedings
12 would be useful." *Treichler*, 775 F.3d at 1101. Only if the first two steps were satisfied would
13 the Court consider whether, "if the improperly discredited evidence were credited as true, the
14 ALJ would be required to find the claimant disabled on remand." *Garrison*, 759 F.3d at 1020.
15 "Even if [the Court] reach[es] the third step and credits [the improperly discredited evidence] as
16 true, it is within the court's discretion either to make a direct award of benefits or to remand for
17 further proceedings." *Leon*, 880 F.3d at 1045 (citing *Treichler*, 773 F.3d at 1101).

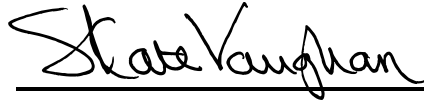
18 Here, the Court has concluded that the ALJ's evaluation of Dr. Widlan's and Dr. Deem's
19 medical opinions, Dr. Swing's 2020 medical opinion, Plaintiff's testimony, and the lay witness
20 testimony was supported by substantial evidence and free from error. The lone errors pertain
21 solely to the ALJ's supportability findings regarding Drs. Shadrach's opinion and Dr. Swing's
22 2019 and 2021 opinions, and the ALJ's related failure to make specific consistency findings
23

1 regarding those opinions. Therefore, outstanding issues remain that the ALJ must resolve, and
2 remand for further administrative proceedings is the appropriate remedy.

3 **CONCLUSION**

4 For the reasons set forth above, the Commissioner's final decision is REVERSED and
5 this case is REMANDED for further administrative proceedings under sentence four of 42
6 U.S.C. § 405(g). On remand, the ALJ should reconsider the persuasiveness of Drs. Shadrach's
7 opinion and Dr. Swing's 2019 and 2021 opinions and articulate adequate supportability and
8 consistency findings.

9 Dated this 3rd day of August, 2023.

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13 S. KATE VAUGHAN
14 United States Magistrate Judge
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